

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1. GREAT LAKES INSURANCE SE,)	
)	
Plaintiff,)	
)	Case No. CIV-22-00702-JD
vs.)	Judge Jodi W. Dishman
)	
2. FREDY VALLE d/b/a VALLE)	
TRUCKING;)	
3. SILVER STAR CONSTRUCTION)	
COMPANY, INC.;)	
4. TYLON MACKEY;)	
5. ISRAEL JUAREZ;)	
6. ORD TRUCKING, INC.)	
7. ZURICH AMERICAN INS. CO.,)	
)	
Defendants,)	
)	
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8. ZURICH AMERICAN INS. CO.,)	
)	
Defendant/Third Party)	
Plaintiff,)	
)	
vs.)	
)	
9. PROGRESSIVE NORTHERN INS.)	
CO.,)	
)	
Third-Party Defendant.)	

**DEFENDANT/THIRD-PARTY PLAINTIFF ZURICH AMERICAN INSURANCE
COMPANY’S MOTION TO STAY PROCEEDINGS PENDING A
DETERMINATION OF DISPOSITIVE MOTIONS IN THE UNDERLYING SUIT
AND BRIEF IN SUPPORT**

Defendant/Third-Party Plaintiff, Zurich American Insurance Company (“**ZAIC**”) respectfully submits its Motion to Stay Proceedings Pending a Determination of Dispositive Motions in the Underlying Suit and Brief in Support (“**Motion**”). In support of its Motion, ZAIC states as follows:

1. This case arises out of an underlying lawsuit relating to a motor vehicle accident (“**Accident**”) which occurred on September 4, 2019 in Payne County, Oklahoma, involving Israel Juarez (“**Juarez**”) and then-twenty-year-old Tylon Mackey (“**Mackey**”). At the time of the Accident, Juarez was operating a dump truck owned by ORD Trucking, Inc. (“**ORD**”). Mackey, who was driving a motorcycle, sustained catastrophic injuries, including a traumatic brain injury which will necessitate life-long, twenty-four hour care.¹ Mackey filed a lawsuit in the District Court of Payne County, Oklahoma on July 8, 2020, styled as *Tylon Mackey v. Israel Juarez, ORD Trucking, Inc., Fredy N. Valle Sr. d/b/a Valle Trucking, and Silver Star Construction Company, Inc.*, Payne County Case No. CJ-2020-233 (“**Underlying Suit**”). At the time of the Accident, ORD had been hired by and was transporting materials for Fredy N. Valle, Sr. d/b/a Valle Trucking (“**Valle**”). Valle had engaged ORD’s services to haul materials to fulfill Valle’s contractual obligations with another entity, Silver Star Construction Company, Inc. (“**Silver Star**”) pursuant to a Hauling Services Agreement (“**HSA**”) entered into by Valle and Silver Star. As part of its obligations under the HSA, Valle had listed Silver Star on Certificates of Insurance Valle obtained from its insurers, Great Lakes Insurance SE

¹ According to discovery in the Underlying Suit, Mackey cannot speak or perform without assistance activities of daily living such as feeding, clothing, or performing personal hygiene without assistance, and that he is 100% disabled and is dependent upon others to complete any task.

(“**Great Lakes**”) and Progressive Northern Insurance Company (“**Progressive**”). At the time of the Accident, Silver Star also had in effect an insurance policy issued by ZAIC. Great Lakes and ZAIC have provided a defense for Silver Star in the Underlying Suit, but Progressive has not.

2. Pursuant to the Court’s Settlement Conference Order (Doc. 84) filed on October 3, 2023, a Settlement Conference was previously scheduled in this action on Friday, January 5, 2024 at 1:30 p.m. before the Honorable Suzanne Mitchell, United States Magistrate Judge for the United States District Court, Western District of Oklahoma.

3. On December 21, 2023, ZAIC filed Motion to Strike the Settlement Conference (unopposed by Progressive, Silver Star, and Tylon Mackey) for the reason that the settlement conference appears futile until such time as the court in the Underlying Suit makes a determination as to whether Silver Star is entitled to a judgment of nonliability as a matter of law regarding the underlying automobile accident. Judge Mitchell conducted a Microsoft Teams hearing regarding ZAIC’s Motion to Strike Settlement Conference on December 28, 2023, and advised that an Order would issue striking the Settlement Conference.

4. While conducting discussions with counsel pursuant to Local Rule LCvR16.2(e), and Paragraph 2(B)(4) of the Court’s Settlement Conference Order, ZAIC’s counsel discussed with counsel for Great Lakes, Progressive, Tylon Mackey, and Silver Star whether the previously scheduled settlement conference could be fruitful in light of the parties’ positions on summary judgment and the procedural posture of the Underlying Suit, and with it appearing that the conference would be very unlikely to resolve the declaratory

judgment action or the Underlying Suit, ZAIC filed its Motion to Strike Settlement Conference. The parties have all agreed the holding of the Settlement Conference at this juncture would be a futile act until such time as the Payne County District Court has ruled upon Silver Star's yet-to-be-filed motion for summary judgment.²

5. Silver Star's counsel in the Underlying Suit has advised ZAIC of his intention to file a Motion for Summary Judgment prior to the Payne County District Court's deadline of April 30, 2024, but has advised there are two remaining depositions to be taken in the Underlying Suit before such motion may be prepared: that of Israel Juarez, the operator of the truck involved in the collision (to be re-deposed by agreement of the parties in the Underlying Suit, as Silver Star's counsel was not a party to the suit at the time of his first deposition), and a former employee of Silver Star. Due to the number of parties and attorneys involved in the underlying suit (four Defendants and seven attorneys), the prompt scheduling of these additional depositions has been a challenge. While ZAIC was hopeful that Silver Star's Motion for Summary Judgment could be filed in the Underlying Suit at an earlier stage, this unfortunately has not occurred.

6. Also relevant to this Motion is that Silver Star has an umbrella policy with Great American Insurance Company Commercial Umbrella Policy No. TUU 5-57-81-39-14, which provides liability limits of \$5,000,000.00. The underlying insurance for the umbrella policy is ZAIC's policy, which must be exhausted prior to implicating the

² Great Lakes' counsel was unable to hear back from their overseas client until after the Motion to Strike Settlement Conference was filed, but counsel advised during the Microsoft Teams hearing on December 28, 2023 that Great Lakes did not oppose striking the Settlement Conference under these circumstances.

umbrella policy. With Silver Star's stated intention to file a motion for summary judgment contesting liability for the underlying accident, ZAIC cannot make a determination as to whether its policy limits may be exhausted until such time as the Payne County Court rules on Silver Star's yet-to-be-filed Motion for Summary Judgment. This likewise delays any determination by Great American Insurance Company as to whether its umbrella coverage may be triggered, as well as preventing a complete evaluation of its own potential duty to indemnify Silver Star. ZAIC's request for a stay of this action pending determination in the Underlying Suit of Silver Star's non-liability for the subject accident affects the extent of potential indemnity coverage under both the ZAIC and the Great American policies. Of course, the availability or unavailability of indemnity coverage under one or both of these policies will have a significant impact on whether the Underlying Suit may be resolved prior to trial, and a ruling on Silver Star's yet-to-be-filed Motion for Summary Judgment will greatly impact the trajectory of settlement negotiations.

7. ZAIC respectfully submits that Silver Star's impending Motion for Summary Judgment also presents the possibility that one or more of the summary judgment motions presently pending before this Court will be potentially moot, in the event Silver Star is found to have no liability in the underlying case as a matter of law.

8. Pursuant to the Court's Scheduling Order (Doc. 56), upcoming deadlines in this action include the following:

- a. February 6, 2024—designations of deposition testimony, motions in limine, requested voir dire, trial briefs, requested jury instructions, proposed findings of fact and conclusions of law, Final Pretrial Report;

- b. February 13, 2024—objections and counter-designations
- c. February 20, 2024—objections to counter-designations, objections to trial submissions
- d. March 12, 2024—trial docket

9. A Scheduling Order has been entered in the Underlying Suit, which sets a discovery and dispositive motion deadline of April 30, 2024. No pretrial conference date is set in the Underlying Suit, but a disposition docket date is set for May 2, 2024, where parties are expected to announce whether they are ready for trial.

10. Silver Star, ZAIC's insured, has advised of its intention, after conducting some additional depositions in the Underlying Suit, to file a Motion for Summary Judgment in the Underlying Suit. This motion will be filed on or before the Payne County District Court's Scheduling Order deadline, which is currently April 30, 2024. The motion will dispute liability of Silver Star for the subject automobile accident.

11. ZAIC submits that any determination of the respective insurers' duty to indemnify Silver Star as to the claims in the Underlying Suit would be premature prior to a ruling on Silver Star's anticipated summary judgment motion for the underlying auto accident.

12. ZAIC, Great Lakes, and Progressive have filed various Motions for Summary Judgment in the instant action, which are fully briefed and ripe for decision.

13. On December 18th (by telephone) and on December 19th (via email with a draft copy of this Motion attached), the undersigned conferred with counsel for Mackey, Progressive, Great Lakes, and Silver Star, and counsel for Tylon Mackey and Silver Star expressed no objection via telephone discussion. The undersigned again requested a response from

counsel regarding the relief requested herein during the Microsoft Teams hearing with Judge Mitchell and following the hearing via additional email messages on December 28, 2023 and January 2, 2024, but as of the filing of this Motion, counsel for Great Lakes and Progressive have not advised whether Great Lakes and Progressive object to a stay of this action until such time as the Payne County District Court rules upon dispositive motions.

WHEREFORE, Defendant/Counterclaimant/Third-Party Plaintiff Zurich American Insurance Company respectfully requests that the Court stay proceedings in this matter until such time as dispositive motions are ruled upon in the Underlying Suit, and grant any further relief to which ZAIC may be entitled.

Respectfully Submitted,

ASTON | MATHIS | CAMPBELL PLLC

By s/Amy E. Hampton

RACHEL C. MATHIS, OBA #16360

AMY E. HAMPTON, OBA # 20235

2642 East 21st Street, Suite 250

Tulsa, OK 74114

(918) 949-9966

FAX: (918) 949-9968

E-Mail: rmathis@amlawok.com

ahampton@amlawok.com

Attorney for Defendant/Third-Party Plaintiff

Zurich American Insurance Company

CERTIFICATE OF SERVICE

I, Amy E. Hampton, hereby certify that on this 3rd day of January, 2024, a true and correct copy of the foregoing document was served upon the following via the Court's electronic notification system:

Michael S. Linscott
Doerner, Saunders, Daniel & Anderson, L.L.P.
Two West Second Street, Suite 700
Tulsa, OK 74103-3117
Attorney for Great Lakes Insurance SE

Brian M. Keester
Doerner, Saunders, Daniel & Anderson, L.L.P.
2 West Second Street, Suite 700
Tulsa, OK 74103-3117
Attorney for Great Lakes Insurance SE

Emily E. Williams
Doerner, Saunders, Daniel & Anderson, L.L.P.
210 Park Avenue, Suite 1200
Oklahoma City, OK 73102
Attorney for Great Lakes Insurance SE

J. Chris Horton
J. Chris Horton, PC
PO Box 576
El Reno, OK 73036
Attorney for Silver Star Construction Company, Inc.

James A. Scimeca
Burch, George & Germany
1500 City Place Bldg.
204 N. Robinson, Ste 1500
Oklahoma City, OK 73102
Attorney for Tylon Mackey

Ryan Polchinski
Law Offices of Daniel M. Davis
300 N. Walnut Ave.
Oklahoma City, OK 73104
Attorney for Tylon Mackey

Andrew Polchinski
Law Offices of Daniel M. Davis
300 N. Walnut Ave.
Oklahoma City, OK 73104
Attorney for Tylon Mackey

Bradley E. Bowlby
Starr, Begin & King, PLLC
1800 South Baltimore, Suite 550
Tulsa, OK 74119
Attorney for Progressive Northern Insurance Company

Christopher C. King
Starr, Begin & King, PLLC
1800 South Baltimore, Suite 550
Tulsa, OK 74119
Attorney for Progressive Northern Ins. Co.

s/Amy E. Hampton
AMY E. HAMPTON

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